

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.Rev.Pet.No. 1029 of 1999

CRA.179/1998 of SESSIONS COURT, KOLLAM
CC.831/1997 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA
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REVN. PETITIONER:

JESTYA NADAR STEPHAN,
J.K. ALUMINIUM COMPANY
VELAYIL LODGE, RANNI VILLAGE
(KAILASAPURAM VEEDU, THIRUCHENTHOOR TLAUK
THIRUNELVELI DISTRICT.)

BY ADV. SRI.B.RAMAN PILLAI
SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS:

STATE REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNKAULAM.

BY PUBLIC PROSECUTOR MR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CRL.M.P.NO.4738/1999 IN CRL.R.P.NO. 1029/1999

DISMISSED.

30-5-2007

SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J

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CRL. R.P. NO. 1029 OF 1999

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Dated this the 30th day of May 2007

ORDER

The revision petitioner is the 2nd accused in C.C. No. 831/1997 in the file of Judicial First Class Magistrate-I, Kottarakkara with respect to the offences under Sections 457, 461, 380 r/w Section 34 of the Indian Penal Code. He stands convicted and sentenced to undergo rigorous imprisonment for two years for the offence under Section 457 IPC and rigorous imprisonment for one year for the offence under Section 380 IPC and rigorous imprisonment for three months each for the offence under Section 461 IPC. It is submitted that A1 was also convicted and sentenced for the above terms and that he underwent the imprisonment.

2. The prosecution case is that on 08.12.1992 at about 2 a.m. in the middle of night, the accused removed the latches of the door of PW1 and committed theft of currency notes amounting to Rs.5,000/- , 15 gold bangles valued at Rs.60,000/-, one thadavala, necklace worth Rs.18,000/-, gold chain worth Rs.6,000/- and one ring of peacock fashion valued at Rs. 1,500/- and three other gold rings and ear studs

(total 33 1/4 sovereigns worth Rs.99,750/-) as well as silk sarees which were purchased and kept by CW1 for the marriage purpose of her daughter. A3 was also involved. He died before submitting final report. A2/revision petitioner surrendered on 12.05.1994 and was released on bail. The evidence adduced in the matter consisted of the testimony of PWs 1 to 11, Exts. P1 to P13 and MOs 1 to 12. The main evidence connecting the revision petitioner with offences is that of PW1, the lady, who lodged FIS and from whose house burglary was conducted and the evidence of PW10, the Investigating officer who effected recovery of MO4, gold ingot, MO5, peacock fashion ring.

3. It is the contention of the counsel for the revision petitioner that the only evidence to connect the revision petitioner/A2 with the offence is the recovery of MO.5 ring in peacock fashion. According to him, there is a discrepancy as to what has been stated by PW1 in Ext.P1 F.I.S. that the ring is in the shape of peacock () whereas the ring recovered is one with the figure of peacock engraved on the ring. She has identified MO.5 ring. Nothing could be brought out in the cross examination of PW1 to the effect that the ring that was mentioned in Ext.P1 was a different ring.

4. Another contention raised is that no independent witness has been examined to prove the recovery of MO.5. I find that MO.5 has

been recovered from a jewellery in Thiruchandur Taluk in Tamil Nadu as per Ext.P6(a) portion of confession statement of A2/revision petitioner. Section 27 recovery statement of A2 is not vitiated by any infirmity. Apart from PW10, the Circle Inspector who recovered MO.4 gold ingot and MO.5 gold ring in peacock fashion, PW7, the goldsmith who weighed the articles recovered at the places from where the recoveries were effected has also testified. Nothing has been brought out in the evidence of PW7 to discredit his version with respect to the fact that the articles were weighed at the places from where the same were recovered. The evidence of PW10 stands not rendered incredible in the cross examination. PW10 has asserted in the cross examination by the counsel for 2nd accused that PW7, the goldsmith, weighed the articles and verified the quality at the places where from the articles were recovered. In view of the above evidence, I find that the contention of the counsel for the revision petitioner that there is no proper evidence with respect to the recovery of MO.5 peacock fashion ring cannot be upheld.

5. In the circumstances and in view of the evidence adduced in the matter, which has been considered meticulously by the courts below, I find that the finding of conviction of the revision petitioner is only to be confirmed.

So far as the sentence is concerned it is pointed out that the incident has taken place in 1992 and since 1994 the revision petitioner has been facing the proceedings. It is also pointed out that he is not involved in any other similar incident. In the circumstances and considering the long delay, I find that the sentence is liable to be modified. The sentence imposed is modified to simple imprisonment for three months for the offence under Section 380 I.P.C. and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for two months more; simple imprisonment for three months for the offence under Section 457 I.P.C. and also to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for two months and also to undergo simple imprisonment for three months for the offence under Section 461 IPC. and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for two months. The sentence of imprisonment shall be undergone concurrently. The Crl.revision petition is disposed of accordingly.

Sd/-
K.R. UDAYABHANU, JUDGE.

rv/ks.

TRUE COPY

K.R.UDAYABHANU, J

CRL.R.P.NO.1029 OF 1999

ORDER

30-5--2007

K.R.UDAYABHANU, JUDGE

ks.